

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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COLLEEN SAMMY,

Plaintiff,

-against-

FCLS CAR AND LIMOUSINE SERVICES  
INC., FCLS CORP., and WAEL ABDELATIF,

Defendants.  
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REPORT AND  
RECOMMENDATION

13 CV 6134 (NGG)(RML)

LEVY, United States Magistrate Judge:

By order dated April 7, 2014, the Honorable Nicholas G. Garaufis, United States District Judge, referred plaintiff's motion for a default judgment to me for a report and recommendation. I conducted evidentiary hearings on June 23, 2014 (see Hearing Transcript, dated June 23, 2014) and November 6, 2014 (see Hearing Transcript, dated Nov. 6, 2014), and received supplemental submissions on November 25, 2014 and December 9, 2014.

On December 8, 2014, plaintiff filed an Amended Complaint. (See Amended Complaint, dated Dec. 8, 2014, Dkt. No. 27.) Although defendants have not filed an Answer or otherwise moved with respect to the new pleading, plaintiff can no longer pursue a default judgment on the original pleading. Since the Clerk's Entry of Default on that pleading is moot, plaintiff must move for a default judgment on the Amended Complaint in accordance with FED. R. CIV. P. 55 and Local Civil Rule 55.2. See Allstate Ins. Co. v. Yadgarov, No. 11 CV 6187, 2014 WL 860019, at \*8 (E.D.N.Y. Mar. 5, 2014); Lemon Tree Dev. LLC v. Philopatyr Corp., No. 10 CV 5228, 2011 WL 6396624, at \*2 (E.D.N.Y. Dec. 20, 2011); Viznai v. United Homes of New York, Inc., No. 07 CV 4173, 2009 WL 931178, at \*2 (E.D.N.Y. Apr. 3, 2009); Rock v. Am.

Exp. Travel Related Servs. Co., No. 08 CV 853, 2008 WL 5382340, at \*1 (N.D.N.Y. Dec. 17, 2008). See also Int'l Controls Corp. v. Vesco, 556 F.2d 665, 668–69 (2d Cir. 1977) (“It is well established that an amended complaint ordinarily supersedes the original and renders it of no legal effect.”).

I therefore respectfully recommend that plaintiff’s motion for a default judgment on the original complaint be denied without prejudice to a similar motion on the Amended Complaint. Any objections to this Report and Recommendation must be filed with the Clerk of the Court, with courtesy copies to Judge Garaufis and my chambers, within fourteen days. Failure to file objections within the specified time waives the right to appeal the district court’s order. See 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72, 6(a), 6(e).

Respectfully submitted,

/s/  
ROBERT M. LEVY  
United States Magistrate Judge

Dated: Brooklyn, New York  
February 9, 2015